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DILLON & YUDELL LLP 8911 N. CAPITAL OF TEXAS HWY., SUITE 2110 AUSTIN, TX 78759			WHIPPLE, BRIAN P	
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/631,059

Filing Date: July 31, 2003

Appellant(s): DAY ET AL.

Andrew J. Dillon
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/17/08 appealing from the Office action mailed 7/13/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2004/0158609 A1	Daniell et al.	8-2004
2004/0003042 A1	Horvitz et al.	1-2004
5,493,692	Theimer et al.	2-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-9, 11-15, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniell et al. (Daniell), U.S. Publication No. 2004/0158609 A1, in view of Horvitz et al. (Horvitz), U.S. Publication No. 2004/0003042 A1.

As to claim 1, Daniell discloses a method in a data processing system for managing a messaging session (Abstract), said method comprising the steps of:

detecting an input device activity by a participant with a messaging application (Abstract, ln. 10-13; [0036], ln. 16-18);

resetting an internal timer within the messaging application in response to said detecting the input device activity by the participant with the messaging application ([0036], ln. 16-21; [0100], ln. 7-13);

in response to said internal timer exceeding a specified time limit, determining the participant has disengaged activity in the messaging session ([0036], ln. 16-21);

determining a current activity of the participant ([0036], ln. 16-21; [0100], ln. 7-13);

detecting a preference set by the participant, wherein said preference determines how a status indication is displayed to the message recipient (Fig. 11); and

transmitting the status indication in accordance with said preference to a message recipient in the messaging session, wherein the status indication indicates the current activity of the participant (Fig. 11; [0093], ln. 1-5).

Daniell is silent on said determining further comprises determining what application is receiving the input device activity by the participant.

However, Horvitz discloses said determining further comprises determining what application is receiving the input device activity by the participant (Abstract, ln. 8-11; [0100], ln. 7-11).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Daniell by determining what application is receiving input device activity by a participant as taught by Horvitz in order to facilitate real-time, peri-real time, and/or long-term planning for messaging and collaboration by providing information on a user's location and/through application usage (Horvitz: [0007], ln. 9-17).

As to claim 2, Daniell and Horvitz disclose the invention substantially as in parent claim 1, including the status indication is a textual message to the recipient (Fig. 11; [0093], ln. 1-5).

As to claim 3, Daniell and Horvitz disclose the invention substantially as in parent claim 1, including the status indication is a graphic presented to the message recipient (Fig. 7-8).

As to claim 5, Daniell and Horvitz disclose the invention substantially as in parent claim 1, including the step of determining a current activity of the participant comprises determining a current activity of the participant with a hardware system component of the data processing system (Daniell: [0036], ln. 16-21; [0100], ln. 7-13).

As to claim 6, Daniell and Horvitz disclose the invention substantially as in parent claim 1, including the step of determining a current activity of the participant comprises determining a current activity of the participant with a software system component of the data processing system (Daniell: [0100], ln. 7-10; Horvitz: Abstract, ln. 8-11; [0100], ln. 7-11).

As to claim 19, Daniell and Horvitz disclose the invention substantially as in parent claim 1, including the current activity of the participant comprises utilization of a telephone system during the messaging session (Horvitz: [0076], ln. 14-15).

As to claim 20, the claim is rejected for the same reasons as claim 19 above.

As to claims 7 and 13, the claims are rejected for the same reasons as claims 1 and 19 above.

As to claims 8 and 14, the claims are rejected for the same reasons as claim 2 above.

As to claims 9 and 15, the claims are rejected for the same reasons as claim 3 above.

As to claims 11 and 17, the claims are rejected for the same reasons as claim 5 above.

As to claims 12 and 18, the claims are rejected for the same reasons as claim 6 above.

Claims 4, 10, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniell and Horvitz as applied to claims 1, 7, and 13 above, and further in view of Theimer et al. (Theimer), U.S. Patent No. 5,493,692.

As to claim 4, Daniell and Horvitz disclose the invention substantially as in parent claim 1, including presenting a status indication to a message recipient (Abstract, ln. 10-13; [0093], ln. 1-5), but are silent on the message recipient specifies how the indication is presented to the message recipient.

However, Theimer discloses the message recipient specifies how the indication is presented to the message recipient (Fig. 1; Col. 24, ln. 8-48).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Daniell and Horvitz by enabling the message recipient to specify how an indication is presented to the message recipient as taught by Theimer in order to enable a user to tailor the delivery of an indication to his or her location and/or available devices (Theimer: Col. 24, ln. 8-48) in order to increase privacy relative to other users in proximity to the user (Theimer: Col. 24, ln. 8-48).

As to claims 10 and 16, the claims are rejected for the same reasons as claim 4 above.

(10) Response to Argument

• **Argument 1 (see pages 6-7 of the appeal brief)**

Horvitz discloses presence forecasts that include a user's current or future locations at different levels of location precision and usage of different devices or applications (Abstract, lines 8-11). The presence forecasts of Horvitz are probabilistic predictions of a user's location and usage of different devices or applications (paragraph [0007], lines 11-13). The presence forecasts of Horvitz do not comprise determining what application is receiving the input device activity by a messaging participant, as claimed.

• **Examiner's Response to Argument 1**

As to argument 1, Horvitz does disclose a system for forecasting. However, such forecasting is based on the current activity of the user, including determining what application is receiving input device activity by a participant.

Horvitz discloses the event system can monitor a user's interaction with computing systems, including applications that are running on a system, applications that are now in focus or that have just gone out of focus ([0072], ln. 12-16). An example, being the system

can identify when a user is checking email or reviewing a notification ([0072], ln. 16-17).

Thus, Horvitz includes and "mov[es] beyond presence" ([0072], ln. 17-18).

Horvitz can be seen to be disclosing forecasting, but in terms of predicting when a current activity will end. For example, Horvitz gives one example as detecting a current conversation is in progress and predicting when it will end ([0073], ln. 5-7).

Additionally, while Daniell has been relied upon to disclose detecting input device activity (see the corresponding rejection for claim 1 above), Horvitz can be seen to be disclosing this as well. Horvitz discloses detecting mouse clicks, keyboard typing, etc. ([0101]).

- **Argument 2** (see pages 7-8 of the appeal brief)

A person having ordinary skill in the art would not be motivated to combine Daniell with Horvitz to achieve Appellant's invention... Horvitz discloses... probabilistic predictions about current and future states of users to authorized persons and/or automated applications (e.g., states such as time until someone will arrive or leave a location, will be at a location for time at least time t, time will have access to a device, time will review e-mail, time will finish a conversation in progress, time will attend a meeting, and so forth.

- **Examiner's Response to Argument 2**

Appellant's argument is substantially the same as argument 1. Appellant is arguing that the combination would not be obvious due to the absence of current activity detection, as opposed to forecasts. However, Examiner has shown that Horvitz discloses the detection of current input device activity (as discussed above for argument 1). Therefore, such a combination would have been obvious for the reasons given in the corresponding rejection of claim 1 above.

- **Argument 3 (see page 8 of the appeal brief)**

The rejection of exemplary claim 1, as well as independent claims 7 and 13, are therefore improper and should be reversed in view of the arguments set forth herein regarding the rejection of exemplary claim 1. Claims 2-3, 5-6, 8-9, 11-12, 14-15, and 17-20 depend directly or indirectly from independent claims 1, 7, and 13, which have been improperly rejected in view of the cited art.

- **Examiner's Response to Argument 3**

Examiner has refuted the supposed improper rejection of claim 1. Therefore, the argument that claims 2-3, 5-9, 11-15 and 17-20 are improper, solely due to alleged improper rejection of claim 1, is not convincing.

- **Argument 4 (see page 9 of the appeal brief)**

Theimer teaches an application of selective electronic message delivery wherein a user may wish to receive a message reminding him of a meeting with another user (col. 24, lines 1-3), but, for example, may not wish to have the reminder sent if there are other people present in proximity to his display device (col. 24, lines 17-19). Theimer therefore does not teach how the indication of the current activity of a participant is presented to the message recipient, but whether or not the message itself is sent or not sent, depending upon certain predefined conditions.

- **Examiner's Response to Argument 4**

Theimer explicitly discloses "evaluates the message based on the context of the recipient and the priority of the message, and may determine a display property which indicates **how a message should be delivered, if at all** [Emphasis added by Examiner]" (Col. 25, ln. 27-30). Therefore, Theimer discloses not merely determining whether or not the message itself is sent or not, as argued by Appellant, but "how a message should be delivered" as well. For example, Theimer discloses delivering a message, based on a user's personal profile and policies, to the smallest display device available (Col. 24, ln. 29-31).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Brian P. Whipple

/B. P. W./

Examiner, Art Unit 2152

4/7/08

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